

Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

**DATES:** March 2, 1999; 8:30 a.m. until 4:30 p.m.

**ADDRESSES:** Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913-0471.

The Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment. This meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Keweenaw National Historical Park, Frank C. Fiala, P.O. Box 471, Calumet, Michigan 49913-0471, 906-337-3168.

**SUPPLEMENTARY INFORMATION:** The Keweenaw National Historical Park was established by Public Law 102-543 on October 27, 1992.

Dated: February 5, 1999.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 99-4799 Filed 2-25-99; 8:45 am]

BILLING CODE 4310-70-P

## DEPARTMENT OF JUSTICE

### Antitrust Division

[Civ. No. 98 CV 7168 (FB)]

#### **United States, et al. v. Waste Management, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of New York, Brooklyn, NY, in *United States and States of New York and Florida and Commonwealth of Pennsylvania v. Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*, Civ. No. 98 CV 7168 (FB).

On November 17, 1998, the United States, New York Pennsylvania and Florida filed a Complaint, which alleged that Waste Management's proposed acquisition of Eastern would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in nine markets around the country, including New York, NY (disposal of commercial and residential

municipal solid waste); Pittsburgh and Bethlehem/Allentown, PA (disposal of municipal solid waste); Carlisle/Chambersburg, PA area (collection of commercial waste and disposal of municipal solid waste); and Miami/Ft. Lauderdale, and suburban Tampa, FL (collection of commercial waste). the proposed Final Judgment, filed on December 31, 1998, requires Waste Management and Eastern to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Amended Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530 [telephone: (202) 307-0924].

**Constance K. Robinson,**

*Director of Operations & Merger Enforcement.*

#### **Hold Separate Stipulation and Order**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

#### **I**

##### *Definitions*

As used in this Hold Separate Stipulation and Order:

A. "Waste Management" means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries (including Ocho Acquisition Corp.), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Eastern" means defendant Eastern Environmental Services, Inc., a Delaware corporation with its headquarters in Mt. Laurel, New Jersey, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Rights to Eastern's RFP Proposal" means (1) all right, title and interest in the proposal submitted by Eastern to the New York City Department of Sanitation in response to the New York City Request for Proposals to Receive Solid Waste at a Marine Transfer Station, Procurement Identification No. 82797RR0014, dated June 16, 1997, and any amendments, revisions, or modifications thereto; (2) any intangible assets relating to that proposal,

including any engineering, technical, or construction designs, plans or specifications, permit or land use applications, and any options, commitments or agreements of any type for the design, construction, permitting, lease or sale of any land, building or equipment, or to receive, transport store or dispose of waste; (3) at purchaser's option, such technical assistance on that proposal as the purchaser reasonably may require from Eastern for a period of one hundred fifty days (150) after the purchase of the Rights to Eastern's RFP Proposal; and (4) at purchaser's option, airspace disposal rights for up to a twenty-year time period at Eastern's Waverly, VA landfill, pursuant to which defendants will sell rights to dispose of up to 4,000 tons of average daily waste pursuant to any contract award under the New York City RFP, on the terms and conditions specified in the Waste Disposal Agreement, dated December 29, 1998, between Atlantic Waste Disposal, Inc. and Republic Services, Inc.

D. "Relevant Disposal Assets" means, with respect to each landfill or transfer station listed and described herein: (1) All tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; and landfill or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and (2) all intangible assets of the listed landfill or transfer station, including customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

#### 1. Landfills

a. Allegheny County, Pennsylvania—Eastern's Kelly Run Sanitation Landfill, located at State Route 51 South, Elizabeth, Pennsylvania 15037, and known as the Kelly Run Landfill (and includes the waste disposal agreement between Chambers Development Company, Inc. and William H. Martin, Inc. and Eastern Environmental Services, Inc. and Kelly Run Sanitation, Inc., dated 1997);

b. Bethlehem/Allentown, Pennsylvania—Eastern's Eastern Waste of Bethlehem Landfill, located at 2335 Applebutter Road, Bethlehem, Pennsylvania 18015, and known as the Bethlehem Landfill; and

c. Chambersburg-Carlisle, Pennsylvania—Eastern's R&A Bender Landfill located at 3747 White Church Road, Chambersburg, Pennsylvania

17201, and known as the Bender Landfill.

## 2. Transfer Stations

New York, New York—a. Eastern's PJ's Transfer Station located at 222 Morgan Avenue, Brooklyn, New York 11237 (also known as the Morgan Avenue Transfer Station);

b. Eastern's Atlantic Waste Transfer Station located at 110-120 50th Street, Brooklyn, New York 11232, also known as the Atlantic Transfer Station; and

c. Waste Management's Vacarro Transfer Station, located at 577 Court Street, Brooklyn, NY 11231 (also known as the Court Street Transfer Station); and Waste Management's Gesuale Transfer Station, located at 38-50 Review Avenue, Queens, NY 11101 (also known as the Review Avenue Transfer Station), only one of which must be sold pursuant to the terms of the proposed Final Judgment.

E. "Relevant Hauling Assets" means with respect to each commercial route or other hauling asset described herein: (1) All tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property and improvements to real property (*i.e.*, buildings)]; and (2) all intangible assets, including hauling-related customer lists, contracts, and accounts.

Relevant Hauling Assets, as used herein, includes each of the following assets:

1. Scranton, Pennsylvania—Waste Management's front-end loader truck ("FEL") commercial routes servicing Luzerne and Lackawanna County, Pennsylvania;

2. Franklin/Adams/Cumberland Counties, Pennsylvania—Eastern's FEL commercial routes servicing Franklin, Adams and Cumberland Counties, Pennsylvania;

3. Broward County, Florida—Eastern's FEL commercial routes servicing Broward County, Florida;

4. Dade County, Florida—Eastern's FEL commercial routes servicing portions of Dade County, Florida;

5. Hillsborough County, Florida—Eastern's Kimmins Recycling Corporation FEL commercial routes servicing the unincorporated (and grandfathered incorporated) areas of Hillsborough County, Florida solid waste service area, more specifically defined in RFP#C-277-96, Hillsborough County Board of County Commissioners documents 96-2393, as modified by 97-1913.

F. "Hauling" means the collection of waste from commercial customers and the transporting of the collected waste to disposal sites. Hauling, as used

herein, does not include collection of roll-off containers.

G. "Waste" means municipal solid waste.

H. "Disposal" means the business of disposing of waste into approved disposal sites.

I. "Relevant Area" means the county in which the Relevant Hauling Assets or Relevant Disposal Assets are located, or with respect to the Rights to Eastern's RFP Proposal, New York, New York.

J. "Relevant State" means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located.

## II

### *Objectives*

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets, Relevant Hauling Assets, and the Rights to Eastern's RFP Proposal for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, in the Relevant Areas to remedy the effects that plaintiffs allege would otherwise result from Waste Management's acquisition of Eastern. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent and, with the exception of assets listed in Sections I(D)(2)(a) and (c), economically viable and ongoing business concerns; that the Rights to Eastern's RFP Proposal remain independent and uninfluenced by Waste Management; and that competition is maintained during the pendency of the ordered divestitures.

## III

### *Jurisdiction and Venue*

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of New York.

## IV

### *Compliance With and Entry of Final Judgment*

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided

that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

## V

### *Hold Separate Provisions*

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and with the exception of assets listed in Sections I (C) and (D)(2)(a) and (c), operate the Relevant Disposal Assets, the Relevant Hauling Assets, and the Rights to Eastern's RFP Proposal as independent competitive businesses, with management, sales and

operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or negotiation or sales by, any Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's RFP Proposal with defendants' other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform plaintiffs of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and Relevant Hauling Assets will be maintained and, with the exception of assets listed in Sections I (D)(2)(a) and (c), operated as independent, ongoing, economically viable and active competitors in the waste disposal business or waste hauling business, or both in the Relevant Area; (2) management of the Relevant Disposal Assets, Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal will not be influenced by Waste Management; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal will be kept separate and apart from defendants' other operations. Waste Management's influence over the Relevant Disposal Assets, Relevant Hauling Assets, and the Rights to Eastern's RFP Proposal shall be limited to that necessary to carry out Waste Management's obligations under this Hold Separate Stipulation and Order and the Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets [with the exception of assets listed in Sections I (D)(2)(a) and (c)] and the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the

Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets [with the exception of assets listed in Sections I(D)(2)(a) and (c)] and the Relevant Hauling Assets as economically viable and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets [with the exception of assets listed in Sections I(D)(2)(a) and (c)] and the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by plaintiffs in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets, Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Waste Management or Eastern employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works at a Relevant Disposal Asset or Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant

Hauling Assets of Waste Management and Eastern shall be managed by Donald Chappel. Mr. Chappel shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Asset of Waste Management and Eastern, subject to the provisions of this Order and the Final Judgment. In the event that Donald Chappel is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States, after consultation with the Relevant States, within ten (10) working days, the United States shall appoint a replacement.

J. Until such time as the Rights to Eastern's RFP Proposal are divested pursuant to the terms of the Final Judgment, the Rights to Eastern's RFP Proposal shall be managed by Donald Chappel, who shall have complete managerial responsibility for the Rights to Eastern's RFP Proposal, subject to the provisions of this Hold Separate Stipulation and Order, the Final Judgment, any such other written agreement between the defendants and both the United States and the State of New York. In the event that Donald Chappel is unable to perform his duties, the United States and the State of New York jointly shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State, or in the case of the Rights to Eastern's RFP Proposal and the Gesuale or Vaccaro transfer stations, acceptable to both the United States and the State of New York.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

Dated: December 30, 1998.

For Plaintiff United States of America:  
 Anthony E. Harris, Esquire (AH 5876)  
*U.S. Department of Justice, Antitrust Division,  
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 and Ocho Acquisition Corp.

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*Chief Deputy Attorney General.*  
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 Section, PL-01, The Capitol, Tallahassee, FL  
 32399-1050, (850) 414-3856.*

## Order

It is so ordered by the Court, this \_\_\_\_\_  
 day of \_\_\_\_\_.

\_\_\_\_\_  
 United States District Judge

## Final Judgment

Whereas, plaintiffs, the United States of America, the State of New York, the Commonwealth of Pennsylvania, and the State of Florida, and defendants Eastern Environmental Services, Inc. ("Eastern"), Waste Management, Inc. ("Waste Management"), and Ocho

Acquisition Corporation ("Ocho"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and that this Final Judgment shall settle all claims made by plaintiffs in their Amended Complaint filed on December 2, 1998;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is, in the event of the acquisition of Eastern by Waste Management, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing a viable competitor in the disposal business, the commercial waste hauling business, or both in the specified areas;

And whereas, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States, the states of New York and Florida, and the Commonwealth of Pennsylvania currently believe that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

## I

### Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

## II

### Definitions

As used in this Final Judgment:  
 A. "Waste Management" means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Houston, Texas and

includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Eastern" means defendant Eastern Environmental Services, Inc., a Delaware corporation with its headquarters in Mt. Laurel, New Jersey, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Rights to Eastern's RFP Proposal" means (1) all right, title and interest in the proposal submitted by Eastern to the New York City Department of Sanitation in response to the New York City Request for Proposals to Receive Solid Waste at a Marine Transfer Station. Procurement Identification No. 82797RR0014, dated June 16, 1997, and any amendments, revisions, or modifications thereto (hereinafter, the "New York City RFP"); (2) any intangible assets relating to that proposal, including any engineering, technical, or construction designs, plans or specifications, permit or land use applications, and any options, commitments or agreements of any type for the design, construction, permitting, lease or sale of any land, building or equipment, or to receive, transport, store or dispose of waste; (3) at purchaser's option, such technical assistance on that proposal as the purchaser reasonably may require from Eastern for a period of one hundred fifty days (150) after the purchase of the Rights to Eastern's RFP Proposal; and (4) at purchaser's option, airspace disposal rights for up to a twenty-year time at Eastern's Waverly, VA landfill, pursuant to which defendants will sell rights to dispose of up to 4,000 tons of average daily waste pursuant to any contract award under the New York City RFP, on the terms and conditions specified in the Waste Disposal Agreement, dated December 29, 1998, between Atlantic Waste Disposal, Inc. and Republic Services, Inc.

D. "Relevant Disposal Assets" means, with respect to each landfill or transfer station listed and described herein: (1) all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; and landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and (2) all intangible assets of the listed landfill or transfer station, including customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

#### 1. Landfills

a. Allegheny County, Pennsylvania—Eastern's Kelly Run Sanitation Landfill, located at State Route 51 South, Elizabeth, Pennsylvania 15037, and known as the Kelly Run Landfill (and includes the waste disposal agreement between Chambers Development Company, Inc. and William H. Martin, Inc. and Eastern Environmental Services, Inc. and Kelly Run Sanitation, Inc., dated 1997);

b. Bethlehem/Allentown, Pennsylvania—Eastern's Eastern Waste of Bethlehem Landfill, located at 2335 Applebutter Road, Bethlehem, Pennsylvania 18015, and known as the Bethlehem Landfill; and

c. Chambersburg-Carlisle, Pennsylvania—Eastern's R&A Bender Landfill located at 3747 White Church Road, Chambersburg, Pennsylvania 17201 (also known as the Bender Landfill).

#### 2. Transfer Stations

New York, New York—a. Eastern's PJ's Transfer Station located at 222 Morgan Avenue, Brooklyn, New York 11237 (also known as the Morgan Avenue Transfer Station);

b. Eastern's Atlantic Waste Transfer Station located at 110–120 50th Street, Brooklyn, New York 11232 (also known as the Atlantic Transfer Station); and

c. Waste Management's Vacarro Transfer Station, located at 577 Court Street, Brooklyn, NY 11231 (also known as the Court Street Transfer Station); and Waste Management's Gesuale Transfer Station, located at 38–50 Review Avenue, Queens, NY 11101 (also known as Review Avenue Transfer Station), only one of which must be sold pursuant to the terms of Sections IV or V of this Final Judgment.

E. "Relevant Hauling Assets" means with respect to each commercial route or other hauling asset described herein: (1) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property and improvements to real property (i.e., buildings)]; and (2) all intangible assets, including hauling-related customer lists, contracts, and accounts.

Relevant Hauling Assets, as used herein, includes each of the following assets:

1. Scranton, Pennsylvania—Waste Management's front-end loader truck ("FEL") commercial routes servicing Luzerne and Lackawanna County, Pennsylvania;

2. Franklin/Adams/Cumberland Counties, Pennsylvania—Eastern's FEL commercial routes servicing Franklin, Adams and Cumberland Counties, Pennsylvania;

3. Broward County, Florida—Eastern's FEL commercial routes servicing Broward County, Florida;

4. Dade County, Florida—Eastern's FEL commercial routes servicing portions of Dade County, Florida;

5. Hillsborough County, Florida—Eastern's Kimmins Recycling Corporation FEL commercial routes servicing the unincorporated (and grandfathered incorporated) areas of Hillsborough County, Florida solid waste service area, more specifically defined in RFP#C-277-96, Hillsborough County Board of County Commissioners documents 96-2393, as modified by 97-1913.

F. "Hauling" means the collection of waste from commercial customers and the transporting of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

G. "Waste" means municipal solid waste.

H. "Disposal" means the business of disposing of waste into approved disposal sites.

I. "Relevant Area" means the country in which the Relevant Hauling Assets or Relevant Disposal Assets are located, or with respect to the Rights to Eastern's RFP Proposal, New York, New York.

J. "Relevant State" means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located.

### III

#### *Applicability*

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Waste Management shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes defendants' hauling or disposal business in any Relevant Area, that the acquiring party agree to be bound by the provisions of this Final Judgment.

### IV

#### *Divestitures*

A. In the event that Waste Management acquires Eastern, defendants are hereby ordered and

directed in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to:

(1) Sell the Relevant Disposal Assets (excluding the Gesuale and Vacarro transfer stations defined in Section II(D)(2)(c) hereof) and the Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion, after consultation with the Relevant State; and

(2) Offer to sell both the Gesuale Transfer Station and the Vacarro Transfer Station, defined in Section II(D)(2)(c) hereof, and at Waste Management's sole election, sell either one of these two transfer stations to a purchaser or purchasers acceptable to both United States and the State of New York, in their sole discretion, but subject to the standard set forth in Section IV(J) of the Final Judgment.

B. In the event that Waste Management acquires Eastern, defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, to sell by January 18, 1999, the Rights to Eastern's RFP Proposal to Republic Services, Inc. or any other purchaser acceptable to both the United States and the State of New York, in their sole discretion.

C. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State—or with respect to the Rights to Eastern's RFP Proposal, both the United States and the State of New York jointly, in their sole discretion—may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, Waste Management promptly shall make known, by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Waste Management shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Waste Management shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets, the Relevant Hauling Assets, and the Rights to Eastern's RFP Proposal customarily provided in a due

diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Waste Management shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser to employ any Waste Management (or former Eastern) employee (with the exception of Louis D. Paolino, Jr. or Robert M. Kramer) who works at, or whose principal responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets, the Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal.

F. Waste Management shall permit prospective purchasers of the Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's RFP Proposal to have access to personnel and to make such inspection of such assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. With the exception of the assets listed in Sections II (D)(2)(a) and (c), Waste Management shall warrant to any and all purchasers of the Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

H. Waste Management shall not take any action, direct or indirect, that will impede in any way the permitting or operation of the Relevant Disposal Assets or Relevant Hauling Assets, or take any action, direct or indirect, that will impede in any way the permitting of any facility to be built or used pursuant to an award by New York City relating to the Rights to Eastern's RFP Proposal.

I. Waste Management shall warrant to the purchaser of the Relevant Disposal Assets or Relevant Hauling Assets that with the exception of the assets listed in Sections II(D)(2)(a) and (c), there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that with respect to all Relevant Disposal Assets or Relevant Hauling assets, Waste Management will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the asset.

J. Unless the United States, after consultation with the Relevant State,

otherwise consents in writing, the divestitures pursuant to Section IV, whether by defendants or by trustee appointed pursuant to Section V of this Final Judgment, shall include all Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State—or with respect to the Rights to Eastern's RFP Proposal or Vacarro or Gesuale transfer stations [Section II(D)(2)(c)], in such a way as to satisfy both the United States and the State of New York—that the Relevant Disposal Assets or the Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling, or with respect to the Rights to Eastern's RFP Proposal, in such a way as to satisfy both the United States and the State of New York, in their sole discretion, that the purchaser will use its best efforts to compete for a contract award under the New York City RFP. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States sole satisfaction, after consultation with the Relevant State—or with respect to the Rights to Eastern's RFP Proposal or Vacarro or Gesuale transfer stations [Section II(D)(2)(c)], for whom it is demonstrated to both the United States and the State of New York's sole satisfaction—that the purchaser: (1) has the capability and intent of competing effectively in the waste disposal or hauling business in the Relevant Area; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in the Relevant Area; and (3) is not hindered by the terms of any agreement between the purchaser and Waste Management which gives Waste Management the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the Relevant Area.

K. Defendants shall not institute any action to challenge the sale or assignment of the Rights to Eastern's RFP Proposal pursuant to the terms of this Final Judgment, and defendants shall not challenge, on the basis of such sale or assignment, the New York City Department of Sanitation's consideration of such proposal, as sold or assigned, or the New York City

Department of Sanitation's award to a purchaser or assignee of such proposal under the New York City RFP. If any legal action is commenced against such sale or assignment, defendants shall support in that action the sale or assignment of the Rights to Eastern's RFP Proposal.

L. The United States and the State of New York shall file a joint motion with Waste Management to modify the pending Final Judgment in *United States v. USA Waste Service, Inc.*, Civ. No. 98 CV 1616 (N.D. Ohio, filed June 16, 1998), to remove from the Judgment the contingent divestiture of Waste Management's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222 (also known as the Scott Avenue Transfer Station).

## V

### *Appointment of Trustee*

A. In the event that Waste Management has not sold the Relevant Disposal Assets, the Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States (or with respect to the Rights to Eastern's RFP Proposal and Gesuale or Vacarro transfer station, a trustee selected by both the United States *and* the State of New York jointly), to effect the divestiture of each such asset not sold; *provided, however*, that if Waste Management has a definitive agreement to sell either Vacarro or Gesuale transfer station to a purchaser approved by both the United States and the State of New York under the Final Judgment, but the sale of the transfer station cannot be consummated because of Waste Management's or the purchaser's inability to obtain regulatory approval for a change of control or approval to operate the transfer station, then, as long as such inability persists, a trustee shall not be appointed with respect to the sale of either Vacarro or Gesuale transfer station; and *provided further* that if the inability to obtain such regulatory approval persists for one year or more after the signing of a definitive agreement to sell the transfer station and approval of the proposed purchaser by both the United States and the State of New York, Waste Management may request that the United States and the State of New York select—or both the United States and the State of New York may on their own jointly select—a trustee to effect the sale of Gesuale Transfer Station, and at the time such request or joint selection is made any

obligation to sell Vacarro Transfer Station shall terminate.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's RFP Proposal described in Sections II (C), (D) and (E) of this Final Judgment. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. With respect to the Rights to Eastern's RFP Proposal, the trustee shall have the power to offer to sell the airspace disposal rights option on the terms specified in the Waste Disposal Agreement, dated December 29, 1998, between Atlantic Waste Disposal, Inc. and Republic Services, Inc. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Waste Management any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, upon consultation with the Relevant State [except that the sale of the Rights to Eastern's RFP Proposal or the sale of Vaccaro or Gesuale transfer station shall be made to a purchaser or purchasers acceptable to both the United States *and* the State of New York], and shall have such other powers as this Court shall deem appropriate. Waste Management shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Waste Management must be conveyed in writing to the relevant plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Waste Management, on such terms, and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Waste

Management and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Waste Management shall use its best effort to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Waste Management shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Waste Management shall permit bona fide prospective acquirers of each Relevant Disposal Asset, Relevant Hauling Asset, or the Rights to Eastern's RFP Proposal to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report a setting forth (1) the trustee's efforts to accomplish their required divestitures, (2) the reasons, in

the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at that same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in orders to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, or with respect to the Rights to Eastern's RFP Proposal and Vacarro or transfer station Gesuale, requested by both the United States and the State of New York.

## VI

### *Notification*

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, and proposed divestiture pursuant to Sections IV or V of this Final Judgment, Waste Management or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify Waste Management. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Relevant State—or with respect to the Rights to Eastern's RFP Proposal or the sale of Vacarro or Gesuale transfer station [Section II(d)(2)(c)], both the United States *and* the State of New York jointly, in their sole discretion—may request from Waste Management, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Waste Management and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall

otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from Waste Management, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Relevant State—or with respect to the Rights to Eastern's RFP Proposal or the sale of Vaccaro or Gesuale transfer station, both the United States and the State of New York jointly—shall provide written notice to Waste Management and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States (or with respect to the Rights to Eastern's RFP Proposal and Vaccaro or Gesuale transfer station, both the United States and the State of New York jointly) provide written notice to Waste Management and the trustee that it does not object, then the divestiture may be consummated, subject only to Waste Management's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States (or with respect to the Rights to Eastern's RFP Proposal and Vaccaro or Gesuale transfer station, both the United States and the State of New York), and divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Waste Management under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

## VII

### *Affidavits*

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Waste Management shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Waste Management has taken to solicit a buyer

for any and all Relevant Disposal Assets, Relevant Hauling Assets, or Rights to Eastern's RFP Proposal and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the Relevant State—or with respect to the Rights to Eastern's RFP Proposal, and Vaccaro or Gesuale transfer station, any objection by both the United States and the State of New York—to information provided by Waste Management, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, Waste Management shall deliver to plaintiffs an affidavit which describes in detail all actions Waste Management has taken and all steps Waste Management has implemented on an on-going basis to preserve the Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Waste Management's efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Waste Management shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in Waste Management's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Waste Management shall preserve all records of all efforts made to preserve the Relevant Disposal Assets, Relevant Hauling Assets, and Rights to Eastern's RFP Proposal and to effect the ordered divestitures.

## VIII

### *Hold Separate Order*

Until the divestitures required by the Final Judgment have been accomplished, Waste Management shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the

sale of the Relevant Disposal Assets, Relevant Hauling Assets, or the Rights to Eastern's RFP Proposal.

## IX

### *Financing*

Waste Management is ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

## X

### *Compliance Inspection*

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any Relevant State, and on reasonable notice to Waste Management made to its principal offices, shall be permitted:

(1) Access during office hours of Waste Management to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Waste Management, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Waste Management and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of any Relevant State, Waste Management shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Board of the United States, or the Attorney General's Office of any Relevant State, except in the course of legal proceedings to which the United

States or any Relevant State is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Waste Management to plaintiffs, Waste Management represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Waste Management marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rule of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiffs to Waste Management prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Waste Management is not a party.

## XI

### *Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

### *XII. Termination*

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

### *XIII. Public Interest*

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_.

United States District Judge

## **Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

### *I. Nature and Purpose of the Proceeding*

On November 17, 1998, the United States, and the states of New York and Florida, and the Commonwealth of Pennsylvania ("the governments") filed a civil antitrust suit alleging that the

proposed acquisition by Waste Management, Inc. of Eastern Environmental Services, Inc. ("Eastern") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Amended Complaint, filed on December 2, 1998, alleges that in nine markets in the eastern United States, Waste Management and Eastern are two of the most significant competitors in commercial waste collection, or disposal of municipal solid waste ("MSW") (i.e., operation of landfills, transfer stations and incinerators), or both services.

The Amended Complaint alleges that a combination of Waste Management and Eastern would substantially lessen competition for the massive \$6 billion contract to dispose of residential waste collected by the New City Department of Sanitation following the closure of the city's Fresh Kills Landfill in late 2001. The Amended Complaint alleges that the combination would also substantially reduce competition in disposal of municipal solid waste in four other highly concentrated markets—Pittsburgh (Allegheny County), Allentown/Bethlehem, and Chambersburg/Carlisle, Pennsylvania, and New York, New York (commercial waste)—and that it would substantially lessen competition in commercial waste collection services in four highly concentrated, relevant geographic markets: Scranton and Carlisle/Chamberburg, Pennsylvania; and the Miami/Ft. Lauderdale and suburban Tampa (Hillsborough County), Florida areas.

According to the Amended Complaint, the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste. The prayer for relief in the Amended Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) a permanent injunction that would prevent Waste Management from acquiring control of or otherwise combining its assets with Eastern.

On December 31, 1998, the governments filed a proposed settlement that would permit Waste Management to complete its acquisition of Eastern, but require the defendants to divest certain waste collection and disposal assets in such a way as to preserve competition in the affected markets. This settlement consists of Hold Separate Stipulation and Order, a proposed Final Judgment, and correspondence that outlines a methodology for selecting which commercial waste collection routes

should be divested in the Miami area and sets forth the standard by which the governments determined whether routes that serve a given geographic area should be divested under the Judgment (Appendix B).<sup>1</sup>

The proposed Final Judgment orders Waste Management and Eastern to divest commercial waste collection routes in each of the relevant areas in which the Complaint alleges the merger would substantially reduce competition in commercial waste collection services. In addition, the Judgment orders Waste Management and Eastern to divest landfills, transfer stations, or disposal rights in such facilities in each of the relevant markets in which the merger would substantially reduce competition in disposal of municipal solid waste. (A summary of the commercial waste collection and waste disposal assets that defendants must divest pursuant to the Judgment appears below in Appendix A.) Waste Management and Eastern must complete their divestitures of the rights to Eastern's RFP proposal by January 18, 1999,<sup>2</sup> and complete their divestitures of the other waste collection and disposal assets within 120 days after December 31, 1998, or five days after entry of the Final Judgment, whichever is later.

The Hold Separate Stipulation and Order ("Hold Separate Order") and the proposed Final Judgment ensure that until the divestitures mandated by the Judgment are accomplished, the currently operating waste collection and disposal assets that are to be divested will be maintained and operated as saleable, economically viable, ongoing concerns, with competitively sensitive

<sup>1</sup> Defendants are required to divest front end loader (FEL) commercial waste collection routes that serve certain geographic areas specified in the Judgment. Because some FEL commercial routes may serve more than one area, the governments agreed that in determining whether a defendant's routes that serve a given area are subject to divestiture under the Judgment the following standard would apply: if a defendant's FEL route obtained 10% or more of its commercial revenues from a geographic area set forth in the Judgment [§§ II(E)(1)-(5)] in the route's most recent year of operation, defendants must divest that FEL commercial route. Applying this principle in the Franklin/Adams/Cumberland area are Pennsylvania, for instance, would require defendants to divest any Eastern FEL commercial route from which 10 percent or more of its revenues derive from customers located in the Franklin, Adams or Cumberland County, PA area. Under this standard, route which serves an area but has a *de minimis* amount of revenue would be excluded.

Defendants have specifically noted the total number of FEL commercial routes they believe must be divested under the Judgment. At this time, the governments, however, have not verified defendants' representations.

<sup>2</sup> The rights to Eastern's RFP proposal were divested to Republic Services, Inc. in a transaction that closed on January 18, 1999.

business information and decision-making divorced from that of the combined company. Subject to the United States' approval. Waste Management will appoint a person to manage the operations to be divested and ensure defendants' compliance with the requirements of the proposed Judgment and Hold Separate Order.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Count would retain jurisdiction to construe, modify or enforce the provisions of the proposed Judgment and to punish violations thereof.

## II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

### A. The Defendants and the Proposed Transaction

Waste Management is the largest waste collection and disposal firm in the United States. Based in Houston, Texas, it provides waste collection and disposal services throughout the country. In 1998, Waste Management's total operating revenues exceeded \$12 billion.

Eastern, based in Mt. Laurel, New Jersey, is a large regional waste collection and disposal firm, with operations concentrated in New York, New Jersey, Pennsylvania, Delaware and Florida, often in direct competition with Waste Management. In 1997, Eastern reported total operating revenues of over \$90 million.

In August 1998, Waste Management announced an agreement to acquire Eastern in a stock transaction worth nearly \$1.2 billion. This transaction, which would combine two major competitors and substantially increase concentration in a number of already highly concentrated, difficult-to-enter waste disposal and collection markets, precipitated the governments' suit.

### B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (e.g., transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Waste Management and Eastern compete in operating waste collection routes and waste disposal facilities.

### 1. The Effects of the Transaction on Competition in the Markets for Commercial Waste Collection

Commercial waste collection is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, and front-end loader vehicles for collection and transportation—is uniquely well suited to commercial waste collection service. Providers of other types of waste collection services (e.g., residential and roll-off services) are not good substitutes for commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different vehicles (e.g., rear- or side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by most commercial accounts, and hence, are infrequently used on commercial waste collection routes. For purposes of antitrust analysis, commercial waste collection constitutes a line of commerce, or relevant service, for analyzing the effects of the merger.

The Amended Complaint alleges that provision of commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing

significant sales to firms outside the area.

Applying that analysis, the Amended Complaint alleges that four areas—Scranton and the Chambersburg/Carlisle area (Franklin/Adams/Cumberland counties), Pennsylvania, and Miami/Ft. Lauderdale and suburban Tampa (Hillsborough County), Florida areas—constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Waste Management and Eastern in the provision of commercial waste collection services. In each of these markets, Waste Management and Eastern are two of the largest competitors, and the combined firm would command from 50 to 75 percent or more of total market revenues. These five commercial waste collection markets generate from \$7 million to well over \$150 million in annual revenues.

Significant new entry into these markets would be difficult, time consuming, and is unlikely to occur soon. Many customers of commercial waste collection firms have entered into "evergreen" contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be very unprofitable to serve. The existence of long term contracts and price discrimination substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Amended Complaint alleges that a combination of Waste Management and Eastern would likely lead to an increase in prices charged to consumers of commercial waste collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers. This is especially troublesome in markets where entry has not proved an effective deterrent to the exercise of market power.

### 2. The Effect of the Transaction on Competition for the Disposal of New York City's Residential Waste After the Closing of Fresh Kills Landfill

A combination of Waste Management and Eastern would have some of its

most immediate, far-reaching and severe effects on competition for the New York City Department of Sanitation's 20–30 year, multi-billion dollar contracts for disposal of the city's residential waste following the state-mandated December 2001 closing of Fresh Kills Landfill, the only landfill that handles the disposal of the city's residential waste. In a lengthy competitive process known as the "RFP," between June 1997 and October 1998, the New York City Department of Sanitation solicited and evaluated proposals from a number of vendors for the disposal of the city's waste, and it recently concluded that Waste Management and Eastern are two of only three firms that remain in contention for contracts under this major procurement.

The RFP, once the contracts are awarded and the proposals implemented, would create a new infrastructure for processing and disposal of New York City's residential waste. The winning contractors would purchase and operate a fleet of barges that would collect up to 9,000 tons of residential waste each day from city-owned transfer stations, and deliver it to one or more new, privately-owned and operated enclosed marine barge unloading facilities ("EBUFs"). The EBUFs would process the residential waste and ship it by rail, truck or ocean-going barge primarily to massive distant landfills for final disposal far from New York.

New York City currently anticipates paying private contractors more than \$200 million annually, over a 20–30 year time period, to construct, operate and manage the waste processing and disposal facilities outlined in its RFP. With total estimated payments of well over \$6 billion over the length of the contracts, the RFP would be the single largest municipal procurement in the history of New York City.

A combination of Waste Management and Eastern would significantly reduce from three to two the city's competitive options for the disposal of its residential waste, and likely result in an increase (or a refusal to negotiate further reductions) in the finalists' charges for disposal of the city's residential waste. As it stands now, Eastern is a competitive alternative for a third or more of any final RFP award. With the elimination of Eastern, the market incumbents, Waste Management and Browning-Ferris Industries, Inc., would no longer compete as aggressively since they would no longer have to worry about losing business to Eastern.

### 3. The Effects of the Transaction on Competition in Other Markets for Disposal of Municipal Solid Waste

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can only be sent for disposal to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposal of MSW.

Disposal of MSW tends to occur in highly localized markets.<sup>3</sup> Disposal costs are a significant component of waste collection services, often comprising 40 percent or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (e.g., mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) all substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discriminate, i.e., charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, five areas—New York City,

<sup>3</sup> Though disposal of municipal solid waste is primarily a local activity, in some densely populated urban areas there are few, if any, local landfills or incinerators available for final disposal of waste. In these areas, transfer stations are the principal disposal option. A transfer station collects, processes and temporarily stores waste for later bulk shipment by truck, rail or barge to a more distant disposal site, typically a sanitary landfill, for final disposal. In such markets, local transfer stations compete for municipal solid waste for processing and temporary storage, and sanitary landfills may compete in a broader regional market for permanent disposal of area waste. The Complaint in this case alleges that in one relevant area—New York, NY—transfer stations are the principal method for disposal of MSW.

NY; Pittsburgh (Allegheny County), Allentown/Bethlehem, and Carlisle/Chambersburg, PA—are relevant geographic markets for disposal of municipal solid waste. In each of these markets, Waste Management and Eastern are two of only a few significant competitors. Their combination would command from over 50 to well over 90 percent of disposal capacity for municipal solid waste, in markets that generate annual disposal revenues of from \$10 million to over \$100 million annually.

Entry into the disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming task. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the acquisition.

In each listed market, Waste Management's acquisition of Eastern would remove a significant competitor in disposal of municipal solid waste. With the elimination of Eastern, market incumbents will no longer compete as aggressively since they will not have to worry about losing business to Eastern. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely ensure that consumers will pay substantially higher prices for disposal of MSW, collection of commercial waste, or both, following the acquisition.

### III. Explanation of the Proposed Final Judgment

The relief described in the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in commercial waste collection and in disposal of MSW from the relevant markets by establishing new, independent and economically viable competitors in each affected market.

#### A. The Proposed Divestitures

First, the proposed Final Judgment requires Waste Management and Eastern to sell by January 18th the rights to Eastern's RFP Proposal to Republic Services, Inc. or any other purchaser acceptable to both the United States and the State of New York.<sup>4</sup> That divestiture must be made promptly so as to not delay the New York Department of Sanitation's plans to quickly conduct

<sup>4</sup> As noted above, defendants sold the rights to Eastern's RFP proposal to Republic Services, Inc. on January 18, 1999.

and complete its final negotiations for contracts to dispose of the city's residential waste before the city must close its only landfill in 2001.<sup>5</sup>

The proposed Final Judgment also requires Waste Management and Eastern, within 120 days after the December 31, 1998 filing of the Hold Separate Stipulation and Order, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell certain commercial waste collection assets ("Relevant Hauling Assets") and disposal assets ("Relevant Disposal Assets") as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the relevant state, or in the case of certain New York City transfer stations, to a purchaser or purchasers acceptable to both the United States and the State of New York.<sup>6</sup> The collection assets to be divested include front-end loader commercial waste collection routes, trucks and customer lists. The disposal assets to be divested include landfills, transfer stations, disposal rights in such facilities, and certain other assets (e.g., leasehold and renewal rights in the particular landfill or transfer station, garages and offices, trucks and vehicles, scales, permits, and intangible assets such as landfill or transfer station-related customer lists and contracts).

Finally, the proposed Judgment [§IV(L)] provides that the United States and the State of New York will join a Waste Management motion to modify the pending consent decree in *United States v. USA Waste Services, Inc.*, No. 98 CV 1616 (N.D. Ohio, filed July 16, 1998), to eliminate this proposed Judgment would substitute an immediate divestiture of either Waste Management's Gesuale or Vacarro transfer station [§§ II(D)(2)(c) and IV(A)(2)]. A day after the filing of the proposed decree in that case, counsel for defendants informed the United States, New York and the other

<sup>5</sup> On December 30, 1998, the governments agreed that Donald Chappel be substituted for Robert Donna as interim trustee for the rights to Eastern's RFP proposal and defendants agreed to restrict Waste Management's access to highly confidential information contained in the rights to Eastern's RFP proposal prior to the proposal's divestiture by Waste Management or by a trustee appointed pursuant to the terms of the Judgment.

<sup>6</sup> The governments interpret Section VI of the proposed Final Judgment as meaning that any request for information involving the rights to Eastern's RFP proposal or Vacarro or Gesuale transfer stations must be a joint request from New York and the Antitrust Division. Since a request continues until such time as it is answered, it can effectively be withdrawn by either New York or the Antitrust Division withdrawing the request—under the decree, such action would mean that there was no ongoing "joint" request for additional information.

governments that defendants had mistakenly agreed to a contingent divestiture of the Brooklyn Transfer Station, when they had actually meant to agree to a contingent divestiture of the Gesuale Transfer Station, located at 38–50 Review Avenue, Queens NY. In addition, defendants contended that they needed to retain the Scott Transfer Station in order to provide disposal services under a New York residential waste contract, which they expected to receive, and that in any event, there was no assurance under the proposed Judgment that after defendants receive the residential waste contract, the Scott Avenue Transfer Station, if divested, would have any capacity remaining for disposal of commercial waste.

The United States and the State of New York agreed to join a motion to revise the proposed decree in the Ohio case, substituting a divestiture of either Vacarro or Gesuale, only if Waste Management agreed to divest both New York City transfer stations it would gain by acquiring Eastern—divestitures which defendants have agreed to make [see Judgment, §§ II(D)(2)(a) and (b) and IV(A)(1)].

#### B. Trustee Provisions

If Waste Management and Eastern cannot accomplish the divestitures within the prescribed time, the Final Judgment provides that, upon application of the United States (or in the case of certain New York City transfer stations, application by both the United States and the State of New York), the Court will appoint a trustee to complete the divestiture of each relevant disposal asset or relevant hauling asset not sold. The proposed Final Judgment generally provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, after consultation with the relevant state, that the assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste collection or disposal that can compete effectively in the relevant area. Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the

trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

#### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

#### V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H

Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

#### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Waste Management and Eastern. The United States could have continued the litigation to seek preliminary and permanent injunctions against Waste Management's acquisition of Eastern. The United States is satisfied, however, that defendants' divestiture of the assets described in the Judgment will establish, preserve and ensure viable competitors in each of the relevant markets identified by the governments. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Waste Management's acquisition of Eastern from having adverse competitive effects.

#### VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively

harm third parties. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>7</sup> Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States v. Mid-America Dairymen, Inc.*, 1977-1 CCH Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>8</sup>

The proposed Final Judgment, therefore, should not be reviewed under

<sup>7</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

<sup>8</sup> *United States v. Bechtel*, 648 F.2d at 666 (citations omitted)(emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.* 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d at 565.

a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."<sup>9</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents with the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 1, 1999.

Filed: February 2, 1999.

Respectfully submitted,

Anthony E. Harris (AH 5876),

U.S. Department of Justice, Antitrust Division, Litigation II Section 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307-6583.

### Appendix A—Summary of Waste Disposal and Collection Assets That Must Be Divested Under the Proposed Final Judgment

#### I. The Rights to Eastern's RFP Proposal

The proposed Final Judgment (§§ II(C), IV and V) requires Waste Management and Eastern to divest to Republic Services, Inc. (or any other purchaser acceptable to the United States and the State of New York) the rights to Eastern's proposal to accept residential waste at a marine transfer terminal from the New York City Department of Sanitation. The rights to Eastern's RFP proposal include not only the rights to Eastern's original proposal, but also any amendments, revisions, or modifications to that proposal and any intangible assets relating to the proposal (e.g., any engineering, technical, or construction designs, plans or specifications, permit or land use applications, and any options, commitments or agreements of any type for the design, construction, permitting, lease or sale of any land, building or equipment, or to receive, transport, store or dispose of waste).

The purchaser of the Rights to Eastern's RFP Proposal, in addition, may obtain such technical assistance on that proposal as the purchaser reasonably may require from Eastern for a period of one hundred fifty days (150) after the purchase of the rights; and at purchaser's option, airspace disposal rights for up to a twenty-year time period at Eastern's Waverly, VA landfill, pursuant to which defendants will sell rights to dispose

<sup>9</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985)

of up to 4,000 tons of average daily waste pursuant to any contract award under the New York City RFP. The optional airspace agreement must be entered into on the terms and conditions specified in the Waste Disposal Agreement, dated December 29, 1998, between Atlantic Waste Disposal, Inc. and Republic Services, Inc.

## II. Waste Disposal Assets

The proposed Final Judgment (§§ II (D) and (E), and (E), IV and V) requires Waste Management and Eastern to divest certain "relevant disposal assets." In general, this means, with respect to each landfill or transfer station, all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; and landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including customer lists, contracts, and accounts, or options to purchase any adjoining property. The list of disposal facilities that must be divested includes properties in the following locations, under the listed terms and conditions:

### A. Landfills

#### 1. Allegheny County, Pennsylvania

Eastern's Kelly Run Sanitation Landfill, located at State Route 51 South, Elizabeth, Pennsylvania 15037, and known as the Kelly Run Landfill (and includes the waste disposal agreement between Chambers Development Company, Inc. and William H. Martin, Inc. and Eastern Environmental Services, Inc. and Kelly Run Sanitation, Inc., dated 1997);

#### 2. Bethlehem/Allentown, Pennsylvania

Eastern's Eastern Waste of Bethlehem Landfill, located at 2335 Applebutter Road, Bethlehem, Pennsylvania 18015, and known as the Bethlehem Landfill; and

#### 3. Chambersburg-Carlisle, Pennsylvania

Eastern's R&A Bender Landfill located at 3747 White Church Road, Chambersburg, Pennsylvania 17201 (also known as the Bender Landfill).

### B. Transfer Stations

New York, New York

1. Eastern's PJ's Transfer Station located at 222 Morgan Avenue, Brooklyn, New York 11237 (also known as the Morgan Avenue Transfer Station);

2. Eastern's Atlantic Waste Transfer Station located at 110-120 50th Street, Brooklyn, New York 11232 (also known as the Atlantic Transfer Station); and

3. Waste Management's Vacarro Transfer Station, located at 577 Court Street, Brooklyn, NY 11231 (also known as the Court Street Transfer Station); and Waste Management's Gesuale Transfer Station, located at 38-50 Review Avenue, Queens, NY 11101 (also known as the Review Avenue Transfer Station), only one of which must be

sold pursuant to the terms of Sections IV or V of this Final Judgment.

## III. Commercial Waste Collection Assets

The Final Judgment also orders Waste Management and Eastern to divest certain commercial waste collection assets. Those assets primarily include routes, capital equipment trucks and other vehicles, containers, interests, permits, supplies, customer lists, contracts, and accounts used to service customers along the routes in the following locations:

### A. Scranton, Pennsylvania

Waste Management's front-end loader truck ("FEL") commercial routes servicing Luzerne and Lackawanna County, Pennsylvania;

### B. Franklin/Adams/Cumberland Counties, Pennsylvania

Eastern's FEL commercial routes serving Franklin, Adams and Cumberland Counties, Pennsylvania;

### C. Broward County, Florida

Eastern's FEL commercial routes servicing Broward County, Florida;

### D. Dade County, Florida

Eastern's FEL commercial route servicing portions of Dade County, Florida; and

### E. Hillsborough County, Florida

Eastern's Kimmins Recycling Corporation FEL commercial routes servicing the unincorporated (and grandfathered incorporated) areas of Hillsborough County, Florida solid waste service area, more specifically defined in RFP#-277-96, Hillsborough County Board of County Commissioners documents 96-2393, as modified by 97-1913.

## Appendix B—Correspondence Between Counsel for Waste Management, Inc. and Eastern Environmental Services, Inc. and Counsel for the United States (Methodology for Determining Which FEL Commercial Routes Must Be Divested Under the Judgment)

### Shearman & Sterling

801 Pennsylvania Avenue, NW., Washington, DC 20004-2604

December 30, 1998.

### By Hand

Anthony E. Harris, Esq.,  
Litigation II Section, U.S. Department of  
Justice, Antitrust Division, 1401 H Street,  
NW., Washington, DC 20530

*United States, et al. v. Waste Management, Inc. et al.*

Dear Tony: I write regarding the Proposed Final Judgment in the above-referenced actions.

Section II(E) of the Proposed Final Judgment defines "Relevant Hauling Assets" and does so by reference to counties "serviced" by a designated defendant's front-end loader commercial routes. The United

States and each of the Relevant States, as defined in the Proposed Final Judgment and Hold Separate Order, have agreed that a front-end loader commercial route of a designated company is engaged in "servicing" a particular county if, in the most recent year of the route's operation, 10% or more of its revenues were generated by customers in that county.

Section II(E)(4) of the Proposed Final Judgment, titled "Dade County, Florida," reads "Eastern's FEL commercial routes servicing portions of Dade County, Florida." The United States, the State of Florida, and Defendants have further agreed that this provision means the following:

(a) one of Eastern's three largest front-end loader commercial routes servicing Dade County, Florida (calculated on the basis of monthly revenues); and

(b) four additional Eastern front-end loader commercial routes servicing Dade County, Florida to be selected by Waste Management in its sole discretion.

Eastern Environmental Services, Inc. has represented that it presently has 10 commercial FEL routes serving Dade County and that Eastern's three largest routes in Dade County are Routes 5, 6, and 11.

I have listed below for each area described in the Proposed Final Judgment the number of front-end loader commercial routes operated by the company whose routes will be divested and that have generated at least 10% of their revenues in the most recent year of operation from customers in the counties set forth in the definition of Section II(e). It is the Defendants' understanding that these routes are all those that need to be divested pursuant to the terms of the Proposed Final Judgment.

Scranton, Pennsylvania

Waste Management's three commercial FEL routes servicing Luzerne and Lackawanna Counties.

Franklin/Adams/Cumberland Counties, Pennsylvania

Eastern's two commercial FEL routes servicing Franklin County, two commercial FEL routes servicing Adams County, and one commercial FEL route servicing Cumberland County.

Broward County, Florida

Eastern's two commercial FEL routes servicing Broward County.

Dade County, Florida

Five of Eastern's ten commercial FEL routes servicing Dade County as described above in this letter.

Hillsborough County, Florida

Eastern's five commercial FEL routes servicing the unincorporated and grandfathered incorporated area of Hillsborough County.

Defendants understand that the United States and each of the relevant states have not, at this stage, verified the Defendants' representations as to which particular routes or the total number of routes that must be divested pursuant to the terms of the Proposed Final Judgment.

Very truly yours,  
 Steven C. Sunshine,  
*Counsel for Waste Management, Inc.*  
 Neal R. Stoll,  
*Counsel for Eastern Environmental Services, Inc.*

Agreed and Acknowledged:  
 Anthony E. Harris,  
*U.S. Department of Justice.*

cc: Douglas L. Kilby, Esq., State of Florida  
 James A. Donahue, III, Esq., Commonwealth of Pennsylvania  
 Richard F. Grimm, Esq., State of New York

### Certificate of Service

I certify that on February 1, 1999, I caused a copy of the foregoing Competitive Impact Statement to be served on the parties in this case by mailing the pleading first-class, postage prepaid, to a duly authorized legal representative of each of the parties as follows:

Jonathan L. Greenblatt, Esquire  
 Steven C. Sunshine, Esquire  
 Michael Strub, Jr., Esquire,  
*Shearman & Sterling, 801 Pennsylvania Avenue, NW, Washington, DC 20004-2604.*  
 James R. Weiss, Esquire,  
*Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006-8425.*

Counsel for Defendants Waste Management, Inc. and Ocho Acquisition Corp.

Neal R. Stoll, Esquire,  
*Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022-3897.*

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 Lizabeth A. Leeds  
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*Assistant Attorneys General, Antitrust Section, PL-01, The Capitol, Tallahassee, FL 32399-1050.*

Counsel for Plaintiff State of Florida  
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*U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307-6583.*

[FR Doc. 99-3925 Filed 2-25-99; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 21, 1998, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm is importing the phenylacetone to manufacture dextroamphetamine sulfate.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 19, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement

Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 5, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99-4753 Filed 2-25-99; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 23, 1998, Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug                         | Schedule |
|------------------------------|----------|
| Methylphenidate (1724) ..... | II       |
| Diphenoxylate (9170) .....   | II       |

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distributions to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 27, 1999.

Dated: February 5, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99-4754 Filed 2-25-99; 8:45 am]

BILLING CODE 4410-09-M